



February 10, 2009

## HOUSE BILL No. 1492

DIGEST OF HB 1492 (Updated February 4, 2009 5:00 pm - DI 69)

**Citations Affected:** IC 13-14; IC 13-20; IC 13-30.

**Synopsis:** Environmental litigation expenses compensation. Allows individuals who bring actions in court against the department of environmental management (department) to receive compensation for attorney's fees incurred in bringing the actions. Establishes the litigation expenses reimbursement fund (fund) to award compensation for the attorney's fees. Provides that: (1) environmental civil penalties; and (2) 10% of the money that the department would otherwise revert to the state general fund at the end of the state fiscal year; are deposited in the fund. Establishes the litigation expenses reimbursement review board to: (1) review applications for compensation; and (2) award compensation from the fund.

**Effective:** July 1, 2009.

**Fry**

January 14, 2009, read first time and referred to Committee on Environmental Affairs.  
February 9, 2009, reported — Do Pass.

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February 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1492

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-14-12-1, AS AMENDED BY P.L.170-2006,  
2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 1. (a) The officials collecting the following shall  
4 remit the money to the treasurer of state:

5 (1) Money collected under ~~the following~~:

6 (A) ~~IC 13-30-4-1~~;

7 (B) ~~IC 13-30-4-2~~;

8 (C) IC 13-30-5-1.

9 (2) Fees collected under IC 13-16-1-2 through IC 13-16-1-5.

10 (b) ~~Except as provided in subsection (c)~~; The treasurer of state shall  
11 credit the money to the environmental management special fund.

12 (c) ~~With respect to the money collected under subsection (a)(1)(A)~~  
13 ~~and (a)(1)(B)~~:

14 (1) ~~the commissioner may direct the treasurer of state to credit all~~  
15 ~~or a part of the money to the solid waste management fund~~  
16 ~~established by IC 13-20-22-2; and~~

17 (2) ~~the treasurer of state shall~~:

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(A) credit money as directed by the commissioner under subdivision (1); and

(B) credit to the environmental management special fund only money that is not credited under subdivision (1).

SECTION 2. IC 13-20-13-8, AS AMENDED BY P.L.204-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Except as provided in subsection (d)(2), (d)(3), **and** (d)(6), **and** ~~(d)(7)~~; the waste tire management fund is established for the following purposes:

(1) The department may use not more than thirty-five percent (35%) of the money deposited in the fund each year for:

(A) the removal and disposal of waste tires from sites where the waste tires have been disposed of improperly; and

(B) operating the waste tire education program under section 15 of this chapter.

(2) The department may use the remaining money deposited in the fund each year to:

(A) provide grants and loans under section 9(b) of this chapter to entities involved in waste tire management activities; and

(B) pay the expenses of administering the programs described in:

(i) subdivision (1)(B); and

(ii) clause (A).

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(d) Sources of money for the fund are the following:

(1) Fees paid under section 4(a)(6) of this chapter and IC 13-20-14-5(e).

(2) Fees collected under section 7 of this chapter. All money deposited in the fund under this subdivision may be used by the department for waste reduction, recycling, removal, or remediation projects.

(3) Costs and damages recovered from a person or other entity under section 14 of this chapter or IC 13-20-14-8. All money deposited in the fund under this subdivision may be used by the department for removal and remediation projects.

(4) Fees established by the general assembly for the purposes of this chapter.

(5) Appropriations made by the general assembly.

(6) Gifts and donations intended for deposit in the fund. A gift or

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donation deposited in the fund under this subdivision may be specified to be entirely for the use of the department.

~~(7) Civil penalties collected under IC 13-30-4 for violations of:~~

~~(A) this chapter;~~

~~(B) IC 13-20-14; and~~

~~(C) rules adopted under section 11 of this chapter and IC 13-20-14-6.~~

All money deposited in the fund under this subdivision may be used by the department for eligible projects.

SECTION 3. IC 13-20-22-2, AS AMENDED BY P.L.137-2007, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The state solid waste management fund is established to provide money for the following:

(1) Programs that provide grants and loans that provide education and promote the following:

(A) Recycling and the use of recycled materials.

(B) Waste reduction.

(C) Management of yard waste.

(2) Providing grants to implement household hazardous waste source reduction or recycling projects.

(3) Providing grants for household hazardous waste and conditionally exempting small quantity generator waste collection, recycling, or disposal projects under IC 13-20-20.

(4) Payments by the department under IC 13-20-17.7-6.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The sources of money for the fund are the following:

(1) All fees deposited into the fund under section 12(2) of this chapter.

(2) Accrued interest and other investment earnings of the fund.

(3) Appropriations made by the general assembly.

(4) Gifts and donations from any person to the fund.

~~(5) Civil penalties imposed under IC 13-30-4 for violations of IC 13-20-17.7 and~~ Proceeds received following a criminal conviction in connection with a violation of IC 13-20-17.7.

(6) Subject to subsection (f), assets assigned and other contributions made by persons.

(7) Transfers from the Indiana recycling promotion and assistance fund under IC 4-23-5.5-14(i).

~~(8) Money credited to the fund from the environmental management special fund under IC 13-14-12-1(c).~~

(d) The treasurer of state shall invest the money in the fund not

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currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(f) Money in the fund resulting from assets assigned and other contributions made under subsection (c)(6) may be used only by the department of environmental management to make payments under IC 13-20-17.7-6.

SECTION 4. IC 13-30-4-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5. Civil penalties collected under this chapter shall be deposited in the litigation expenses reimbursement fund established by IC 13-30-11-6.**

SECTION 5. IC 13-30-11 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 11. Compensation for Litigation Expenses**

**Sec. 1. As used in this chapter, "board" refers to the litigation expenses reimbursement review board established by section 4 of this chapter.**

**Sec. 2. As used in this chapter, "fund" refers to the litigation expenses reimbursement fund established by section 6 of this chapter.**

**Sec. 3. (a) An individual who brings an action in court against the department may apply to the board under this chapter to receive compensation for attorney's fees incurred by the individual in bringing the action.**

**(b) An individual may not apply to the board to receive compensation for attorney's fees until the individual files a complaint or another equivalent pleading or document with a court.**

**(c) A for-profit corporation, partnership, or other for-profit business entity that brings an action against the department may not apply to receive compensation for attorney's fees under this chapter.**

**Sec. 4. (a) The litigation expenses reimbursement review board is established.**

**(b) The board consists of four (4) members appointed as follows:**

**(1) One (1) member appointed by the president pro tempore of the senate.**

**(2) One (1) member appointed by the minority leader of the senate.**

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(3) One (1) member appointed by the speaker of the house of representatives.

(4) One (1) member appointed by the minority leader of the house of representatives.

(c) A person appointed to the board must:

(1) have a background or expertise in environmental matters; and

(2) represent nonprofit associations.

(d) The term of a member of the board is four (4) years.

(e) A member of the board is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Each member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

Sec. 5. The board shall do the following:

(1) Establish procedures and criteria to govern:

(A) applications submitted to the board under this chapter;

(B) the board's review of the applications; and

(C) awarding compensation from the fund to applicants.

(2) Review applications submitted to the board under this chapter.

(3) Award compensation from the fund for attorney's fees incurred by individuals who bring actions in court against the department.

Sec. 6. (a) The litigation expenses reimbursement fund is established for the purpose of awarding compensation for attorney's fees incurred by individuals who bring actions in court against the department.

(b) The fund shall be administered by the board.

(c) The expenses of administering the fund shall be paid by the department.

(d) The fund consists of the following:

(1) Civil penalties collected under IC 13-30-4.

(2) Money transferred to the fund under section 7 of this chapter.

(3) Appropriations made by the general assembly.

(4) Interest as provided in subsection (e).

(5) Gifts and donations made to the fund.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same

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manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 7. An amount equal to ten percent (10%) of the money that:

(1) is appropriated to the department for a particular state fiscal year; and

(2) would otherwise revert to the state general fund at the end of the state fiscal year;

does not revert to the state general fund and instead shall be transferred to the fund.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1492, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

DVORAK, Chair

Committee Vote: yeas 9, nays 2.

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